IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8796 of 2000

For Approval and Signature:
Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DASHRATH @ PANCHIYO SHRIRAM @ RAJKUMAR PRAJAPATI
Versus
COMMISSIONER OF POLICE

Appearance:
MS DR KACHHAVAH for Petitioner
MR UDAY BHATT, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 28/09/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 19.01.2000 passed by respondent no.1 with respect to detenu in exercise of his powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (in short `the Act').

2. As per the papers of grounds of detention, the petitioner-detenu is "a dangerous person" within the meaning of section 2(c) of the Act, and further that

activities of the petitioner are prejudicial to the maintenance of the public order.

3. To arrive at a subjective satisfaction, the detaining authority has placed reliance on three IPC Cases referred to in the grounds of detention and that three IPC cases are pending before the Court for trial. He has also placed reliance on statement of two anonymous witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. One of such statement was recorded on 13.01.2000 and other was recorded on 15.01.2000. That two statements were verified by the detaining authority on 19.01.2000 and on the very same day i.e. on 19.1.2000 he passed an order of detention which is challenged in this writ petition.

4. Though rule has been served upon each respondent, none of the respondents has filed affidavit-in-reply in reply to this writ petition. Thus, it is clear that, the respondents have not controverted the grounds of attack as against the order of detention which is challenged in this writ petition.

5. Ms.D.R.Kachhavah, Learned advocate for the petitioner has argued that statements of two anonymous witnesses were verified on 19.01.2000 and on the same day the detaining authority had passed the order of detention and, therefore, it can be said that he has not applied his mind before passing the order of detention. Learned advocate for the petitioner has cited an authority of Kalidas Chandubhai Kahar Vs. State of Gujarat and ORs. reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec. 9(2) of the Act. It has been further held that at the time of exercising the privilege under Sec.9(2) of the Act, balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Article 22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not. Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. As against this, there is a provision

under Sec.9(2) carved out on the basis of Article 22(5) of the Constitution of India which provides that nothing in sub-sec.(1) shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other. It was held that looking to the respective dates of verification of statements and date of order of detention as stated in that case the detaining authority had no sufficient time to examine the possibility of exercising the power under Sec.9(2) of the Act. This Court held that looking to that facts it is a wrong exercise of powers under Sec.9(2) of the Act which has affected the right of making effective representation under Article 22(5) of the Constitution of India and, therefore, the continued detention of the detenu is bad and illegal.

5.1 Keeping in mind the aforesaid legal position with regard to privilege under Sec.9(2) of the Act, here in this case also, looking to dates of statements of witnesses and date of verification made by the detaining authority and date of order of detention, it can certainly be said that the detaining authority had no time to verify the statements in its correct perspective as expected by this Court in aforesaid case. Therefore, in this case also the order of detention is passed by the detaining authority in wrong exercise of power under Sec.9(2) of the Act, and therefore, it is bad in law and same is required to be quashed and set aside.

6. In view of discussion made hereinabove, this application is allowed. The order of detention which is challenged in this Special Civil Application is bad in law and same is required to be quashed and set aside. Accordingly, the detention order dated 19.01.2000 (Annexure `A') passed by respondent No.1 in respect of petitioner is hereby quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be further detained for any other criminal case or any other criminal proceeding. Rule is made absolute. Direct service is permitted.

(H.H. Mehta, J.)

syed/